

Washington Park Towers Coop, Inc. and Vista Management, Inc., Joint Employers and Local 911, International Union of Production, Clerical and Public Employees. Case 22-CA-18374

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union March 31, 1992, and a first amended charge filed May 22, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Washington Park Towers Coop, Inc. and Vista Management, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, Respondent Washington Park Towers Coop, Inc. did not file an answer, nor did it request an extension of time. Respondent Vista Management, Inc. filed an answer to the complaint on August 17, 1992, but withdrew its answer April 15, 1993.

On June 25, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On June 29, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Respondent Washington Park Towers Coop, Inc. did not file an answer nor did it request an extension of time. Vista Management, Inc. filed an answer on August 17, 1992, but withdrew its answer on April 15, 1993, pursuant to an agreement between Respondent Vista Management, Inc. and the Union.

In the absence of good cause being shown for the failure of Respondent Washington Park Towers Coop, Inc. to file a timely answer, and in view of the withdrawal of its answer by Respondent Vista Management, Inc., we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Washington Park Towers Coop, Inc. and Vista Management, Inc. have been parties to a contract whereunder Vista Management, Inc. is the agent for Washington Park Towers Coop, Inc. in connection with the rental and management of an apartment complex located at 500 Central Avenue, Union City, New Jersey, whereunder they agreed to direct the maintenance, care, and rental of the complex. At all times material, Vista Management, Inc. has possessed and exercised control over the labor relations policy of Washington Park Towers Coop, Inc. At all times material, Washington Park Towers Coop, Inc. and Vista Management, Inc. have been joint employers (the Respondent) of the employees of Washington Park Towers Coop, Inc. At all times material, the Respondent, a corporation with an office and place of business in Union City, New Jersey (the Respondent's facility), has been engaged in the management and rental of an apartment complex located at 500 Central Avenue, Union City, New Jersey. During the 12 months preceding July 31, 1992, the Respondent, in conducting its business operations derived gross revenues in excess of \$500,000. During this time period, the Respondent, in conducting its business operations, purchased goods and materials in excess of \$5000 from suppliers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service and maintenance employees employed by Respondent at its facility known as Washington Towers located at 500 Central Avenue, Union City, New Jersey, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since about 1982, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit, and since about 1982 the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period January 1, 1990, through Decem-

ber 31, 1992. At all times since 1982, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

In or about October 1991, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit. Since in or about October 1991, and at all times material, the Respondent has refused to adhere to, and has repudiated, the collective-bargaining agreement described above. Since October 1991, and at all times material, the Respondent has failed to comply with the welfare benefits provision of the collective-bargaining agreement by failing and refusing to remit contributions to the appropriate welfare fund to continue health and welfare coverage for its employees. Since December 1991, and at all times material, the Respondent has failed to deduct and remit union dues and union initiation fees to the Union as required by the checkoff provisions of the collective-bargaining agreement. Since January 1, 1992, and at all times material, the Respondent has failed and refused to pay its employees a wage increase pursuant to the parties' collective-bargaining agreement. Since January 1993, the Respondent has failed and refused to abide by the grievance-and-arbitration provisions of the parties' collective-bargaining agreement. Since April 1992, and at all times material, the Respondent has failed and refused to comply with the holiday and vacation provisions of the parties' collective-bargaining agreement. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having attained the Union's consent to such conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent has thereby been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to recognize the Union as the exclusive collective-bargaining representative of the unit employees, and to comply with all terms and conditions of its collective-bargaining agreement with the Union, including the welfare benefits provisions, deduction and remission of union dues and

initiation fees, wage increases, grievance-and-arbitration provisions, and holiday and vacation provisions.

The Respondent shall be required to make whole all unit employees who incurred a loss of wages or benefits, including loss of wage increases and holiday and vacation benefits, as a result of the Respondent's refusal to comply with the terms of the agreement, such amounts to be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall order the Respondent to make whole its unit employees by making all contributions to the appropriate welfare fund to continue health and welfare coverage for its employees that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

We shall also order the Respondent to remit to the Union dues and initiation fees as required by the checkoff provisions of the collective-bargaining agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Washington Park Towers Coop, Inc. and Vista Management, Inc., Joint Employers, Union City, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Local 911, International Union of Production, Clerical and Public Employees as the exclusive collective-bargaining representative of the unit. The unit includes:

All service and maintenance employees employed by Respondent at its facility known as Washington Towers located at 500 Central Avenue, Union City, New Jersey, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Refusing to adhere to or repudiating the collective-bargaining agreement with the Union, the most recent of which was effective by its terms for the period January 1, 1990, through December 31, 1992.

(c) Failing to comply with the welfare benefits provision of the collective-bargaining agreement by failing and refusing to remit contributions to the appropriate welfare fund to continue health and welfare coverage for its employees.

(d) Failing to deduct and remit union dues and union initiation fees to the Union as required by the checkoff provisions of the collective-bargaining agreement.

(e) Failing and refusing to pay its employees a wage increase pursuant to the parties' collective-bargaining agreement.

(f) Failing and refusing to comply with the grievance-and-arbitration and holiday and vacation provisions of the parties' collective-bargaining agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the exclusive collective-bargaining representative of the unit employees and comply with all terms and conditions of its collective-bargaining agreement with the Union, including the welfare benefits provisions, deduction and remission of union dues and initiation fees, wage increases, grievance-and-arbitration provisions, and holiday and vacation provisions.

(b) Make whole all unit employees who incurred a loss of wages or benefits, including loss of wage increases and holiday and vacation benefits, as a result of the Respondent's refusal to comply with the terms of the agreement, such amounts to be computed in the manner set forth in the remedy section of this decision.

(c) Make whole its unit employees by making all contributions to the appropriate welfare fund to continue health and welfare coverage for its employees that have not been made and that would have been made but for the Respondent's unlawful failure to make them, and reimburse unit employees for any expenses ensuing from its failure to make such required payments, in the manner set forth in the remedy section of this decision.

(d) Remit to the Union dues and initiation fees as required by the checkoff provisions of the collective-bargaining agreement, with interest.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Union City, New Jersey, copies of the attached notice marked "Appendix."¹

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 28, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from Local 911, International Union of Production, Clerical and Public Employees as the exclusive collective-bargaining representative of our unit employees. The unit includes:

All service and maintenance employees employed by us at our facility known as Washington Towers located at 500 Central Avenue, Union City, New

Jersey, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to adhere to or repudiate the collective-bargaining agreement with the Union, the most recent of which was effective by its terms for the period January 1, 1990, through December 31, 1992.

WE WILL NOT fail to comply with the welfare benefits provisions of the collective-bargaining agreement by failing or refusing to remit contributions to the appropriate welfare fund to continue health and welfare coverage for our employees.

WE WILL NOT fail to deduct or remit union dues or union initiation fees to the Union as required by the checkoff provisions of the collective-bargaining agreement.

WE WILL NOT fail or refuse to pay our employees a wage increase pursuant to the collective-bargaining agreement.

WE WILL NOT fail or refuse to comply with the grievance-and-arbitration and holiday and vacation provisions of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the exclusive collective-bargaining representative of the unit employees

and comply with all terms and conditions of our collective-bargaining agreement with the Union, including the welfare benefits provisions, deduction and remission of union dues and initiation fees, wage increases, grievance-and-arbitration provisions, and holiday and vacation provisions.

WE WILL make whole, with interest, all unit employees who incurred a loss of wages or benefits, including loss of wage increases and holiday and vacation benefits, as a result of our refusal to comply with the terms of the collective-bargaining agreement.

WE WILL make whole, with interest, our unit employees by making all contributions to the appropriate welfare fund to continue health and welfare coverage for our employees that have not been made and that would have been made but for our unlawful failure to make them, and reimburse unit employees for any expenses ensuing from our failure to make such required payments.

WE WILL remit to the Union dues and initiation fees as required by the checkoff provisions of the collective-bargaining agreement, with interest.

WASHINGTON PARK TOWERS COOP,
INC. AND VISTA MANAGEMENT, INC.,
JOINT EMPLOYERS